



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2016-0045; FRL -9948-84-Region 7]

Approval of Iowa's Air Quality Implementation Plans; Polk County Board of Health Rules and Regulations, Chapter V, Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision submitted by the State of Iowa. The purpose of these revisions is to update the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. This final action will reflect updates to the Iowa's statewide rules previously approved by EPA and will ensure consistency between applicable local agency rules and Federally-approved rules.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2016-0045. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by

statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at <http://www.regulations.gov> and at EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. Please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. For additional information and general guidance, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7039, or by email at Hamilton.heather@epa.gov

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. EPA's Response to Comments
- IV. What Action is EPA taking?

I. What is Being Addressed in this Document?

The State of Iowa requested EPA approval of revisions to the local agency's rules and regulations, Chapter V, Air Pollution, as a revision to the State Implementation Plan (SIP). In order for the local program's Air Pollution rules to be

incorporated into the Federally-enforceable SIP, on behalf of the local agency, the state must submit the formally adopted regulations and control strategies, which are consistent with the state and Federal requirements, to EPA for inclusion in the SIP. The regulation adoption process generally includes public notice, a public comment period and a public hearing, and formal adoption of the rule by the state authorized rulemaking body. In this case, that rulemaking body is the local agency. After the local agency formally adopts the rule, the local agency submits the rulemaking to the state, and then the state submits the rulemaking to EPA for consideration for formal action (inclusion of the rulemaking into the SIP). EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state's submission.

EPA received the request from the state to adopt revisions to the local air agency rules into the SIP on December 8, 2015. The revisions were adopted by the local agency on October 6, 2015, and became effective on October 12, 2015. EPA is approving the requested revisions to the Iowa SIP relating to the following:

- Article I. In General, Section 5-1. Purpose and Ambient Air Quality Standards;
- Article I. In General, Section 5-2. Definitions;

- Article X. Permits, Division 1. Construction Permits, Section 5-33. Exemptions from Permit Requirements;
- Article X. Permits, Division 2. Operating Permits, Section 5-39. Exemptions from Permit Requirement.

EPA's action does not cover revisions to:

- Article VI. Emission of Air Contaminants from Industrial Processes, New Source Performance Standards, Section 5-16(n),
- Article VIII. National Emission Standards for Hazardous Air Pollutants for Source Categories, Section 5-16(p), and,
- Article VIII. National Emission Standards for Hazardous Air Pollutants for Source Categories, Section 5-20.

EPA is also approving the definition of Maximum Achievable Control Technology (MACT) that was inadvertently omitted from the January 12, 2015, **Federal Register** notice that approved the September 2013 revisions to the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. 80 FR 1471. The definition of MACT is not referenced elsewhere in Polk County's Federally approved rules.¹

¹Chapter V, Subchapter 5-20 National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories is not Federally approved.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. EPA's Response to Comments

The public comment period on EPA's proposed regulation opened February 16, 2016, the date of its publication in the **Federal Register**, and closed on March 18, 2016. (81 FR 8030). During this period, EPA received one comment, with two separate issues, that are addressed as follows:

Comment: First, the commenter stated that it was not clear if the Polk County local air agency issues Prevention of Significant (PSD) permits for Polk County or if the state agency issues PSD permits. Second, the commenter stated that the SIP submission contained an illegal startup, shutdown, malfunction (SSM) exemption and that EPA could not approve the SIP submission until the SSM exemption was removed.

Response to comment: First, Iowa has a delegated PSD program that is not delegated to local air agencies. 72 FR

27056, May 14, 2007. PSD permits are only issued by the Iowa Department of Natural Resources. No changes will be made in response to this comment.

Second, in response to the commenter's concern that the SIP contains an illegal SSM exemption in Article VI, Section 5-17(a) of the Polk County Board of Health Rules and Regulations, the revisions to the Iowa SIP that EPA is approving are definitions and construction permitting exemptions that do not relate to automatic exemptions from otherwise applicable SIP emissions limitations during periods of startup, shutdown or malfunction. In addition, in response to the commenter's concern, Iowa requested that the EPA not act on a reference in the Polk County Board of Health Rules and Regulations to 567 Iowa Administrative Code (IAC) Chapter 24, as a subsection of that provision is subject to EPA's June 12, 2015 SSM SIP Call. 80 FR 33839.

IV. What Action is EPA Taking?

EPA is taking final action to approve this SIP revision to update the Polk County board of Health Rules and Regulations, Chapter V, Air Pollution. This final action will reflect updates to the Iowa's statewide rules previously approved by EPA and will ensure consistency between applicable local agency rules and Federally-approved rules.

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Iowa Regulations described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated:

June 22, 2016.

Mark Hague,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart Q – Iowa

2. In § 52.820 the table in paragraph (c) is amended by revising the entry for “Chapter V” under the heading “Polk County” to read as follows:

§ 52.820 Identification of plan.

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(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
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Polk County				
Chapter V	Polk County Board of Health Rules and Regulations Air Pollution Chapter V	10/12/15	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Article I, Section 5-2, definition of “variance,” “anaerobic lagoon,” and “greenhouse gases”; Article III, Incineration and Open Burning, Section 5-7(d) Variance Application; Article VI, Sections 5-16(n), (o) and (p); Article VIII; Article IX, Sections 5-27(3) and (4); Article X, Section 5-

				28, subsections (a) through (c), and Article X, Section 5-35(b) (5); Article XIII; and Article XVI, Section 5-75 are not part of the SIP. Article VI, Section 5-17, adopted by Polk County on 7/26/2011, is not part of the SIP, and the previously approved version of Article VI, Section 5-17 remains part of the SIP.
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